

ELIZABETH S. HJELLEN ET AL.

IBLA 85-523

Decided August 20, 1986

Appeal from a decision by the Anchorage District Office, Alaska, Bureau of Land Management, declaring a placer mining claim null and void and rejecting recordation documents for filing. AA-30028.

Reversed in part, affirmed in part.

1. Alaska National Interest Lands Conservation Act: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Lands tentatively approved for conveyance to the State of Alaska were legislatively conveyed to the State by sec. 906 of the Alaska National Interest Lands Conservation Act, and consequently the Department may no longer adjudicate the validity of unpatented mining claims located on such lands. Since sec. 314 of the Federal Land Policy and Management Act of 1976 applies only to public lands of the United States, the filing and recording requirements of sec. 314 do not apply to such legislatively conveyed lands, and the statutory filing requirements may not be relied upon to invalidate or otherwise determine the status of unpatented mining claims located on such conveyed lands.

APPEARANCES: Elizabeth S. Hjellen, pro se; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Alaska Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Elizabeth S. Hjellen, Marie Betts, and Anna T. Short appeal from a March 11, 1985, decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring null and void the Buckeye #2 lode mining claim, AA-30028 and rejecting its recordation filing. On September 28, 1979, appellants filed their notice of location of the mining claim with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). The notice states that the claim was located on March 1, 1963, within T. 19 N., R. 1 W., Seward Meridian, Alaska.

The Buckeye #2 was the subject of a previous BLM decision, dated October 12, 1983, wherein BLM declared the claim null and void ab initio because T. 19 N., R. 1 W. had been selected by the State of Alaska pursuant to the provisions of section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. ch. 2 note (1982), prior to appellants' location of the claim. BLM reached its conclusion on the basis that State selection applications A-058730 (filed Feb. 18, 1963), A-058957 (filed Apr. 8, 1963), and AA-2036 (filed Aug. 17, 1967), had segregated the land against subsequent location and entry under the Federal mining laws. Appellants challenged BLM's ruling before this Board, arguing that the effective filing date of application A-058730 was December 26, 1963, when the State filed amended application A-058730, so that the land embracing their claim was open to location in March 1963. In Elizabeth S. Hjellen, 81 IBLA 341 (1984), the Board set aside BLM's decision on the basis that it could not determine whether the lands embraced by appellants' claim were described in the original State selection application filed on February 18, 1963. In remanding the matter to BLM, the Board stated that "if that township was not included until the December 1963 amendment, appellants' claim would predate the State selection, and BLM's action declaring the claim null and void on the basis of the original State selection application would be improper." 81 IBLA at 343.

In its March 11, 1985, decision, which is the subject of the instant appeal, BLM does not mention application A-058730, the effective filing date of which was the critical issue in appellants' previous appeal to this Board. Rather, BLM states that the subject land was segregated from mineral entry after location of appellants' claim, when the State of Alaska filed on April 8, 1963, State selection applications A-058957 for the E 1/2 of T. 19 N., R. 1 W., and A-058962 for the W 1/2 of that township. BLM's decision recites that publication of the two applications was made for 5 consecutive weeks, beginning on May 9, 1963, in the Weekly Frontiersman located in Palmer, Alaska, and that no protests or objections to the State selections were received by the State or by BLM. On March 3, 1964, BLM issued a decision giving tentative approval to the State for the selected lands. In that decision, BLM combined the lands specified in application A-058962 with those applied for in A-058957 to form a compact unit; subsequently, the lands subject to both applications were processed under A-058957. This decision stated that the selected lands were "unreserved" and "not known to be occupied or appropriated under the public land laws, including the mining laws."

The file contains proof of labor affidavits for the years 1979 through 1984, as required by section 314(b) of FLPMA. By its decision dated March 11, 1985, BLM rejected the recordation filing and declared the Buckeye #2 mining claim null and void for the following reasons:

With the passage of the Alaska National Interest Lands Conservation Act (ANILCA, Public Law 96-487 - December 2, 1980), Sec. 906(c) stated that all prior tentative approvals of State of Alaska land selections were confirmed and that all right, title, and interest of the United States in and to such lands were deemed to have vested in the State of Alaska as of the date of tentative approval.

The effect of subsection 906(c)(1) of ANILCA on legal title is the same as the effect of a conveyance by patent; therefore, the tentative approval granted, without mineral reservations, to the State of Alaska transferred legal title from the United States and removed from the jurisdiction of the Department the resolution of conflicting claims to the land, Harry Pike, 67 IBLA 100; State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast (On Reconsideration), 83 IBLA 237.

When the location notice for the BUCKEYE #2 was filed with BLM on September 28, 1979, the United States had no jurisdiction on the lands encompassed within the mining claims. Therefore, due to lack of jurisdiction over the subject lands, the recordation filing for the BUCKEYE #2 mining claim is hereby rejected. The BLM case file will be closed of record when this decision becomes final.

Appellants argue on appeal that "[o]n March 3, 1964, BLM improperly gave tentative approval of [the] subject land to the State of Alaska," because their claim was located before the State filed its selection application. Appellants claim that when they filed their location notice for Buckeye #2 with BLM, "only 'tentative' approval [had been] granted to the State of Alaska," so that "BLM still had jurisdiction and an obligation to notify any and all parties of conflicting federal mining claims on State selected properties." They contend that ANILCA "improperly awarded [the] land to the State of Alaska while valid federal mining claims still existed." Finally, they request that (1) the claim be returned to them; (2) they receive land of equal value; or (3) they be monetarily compensated for the time, effort, and loss sustained in connection with the mining claim due to the inaccurate recordkeeping of BLM.

[1] This Board resolved the legal questions raised in this appeal in Ed Bilderback, 89 IBLA 263 (1985), in which the salient facts were the same. The claimants in Bilderback located placer mining claims between May 2, 1954, and September 16, 1960. On December 31, 1963, the State of Alaska selected the land pursuant to the Alaska Statehood Act, and tentative approval of the State selection was granted by BLM on September 18, 1964. Thereafter, BLM rejected mining claim assessment affidavits and declared the claims invalid because they were not located upon lands of the United States. The claimants advanced arguments on appeal to this Board which were similar to those presented in the instant case. The Board's principal ruling in Bilderback was that "[t]he Department no longer has authority to affect title to the land at issue in this appeal, which was legislatively conveyed to Alaska by [section 906(c)(1) of ANILCA]." 89 IBLA at 265. See Terry L. Wilson, 85 IBLA 206, 92 I.D. 109 (1985); State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 91 I.D. 331 (1984). The consequences of that ruling were twofold in Bilderback, just as in the present appeal: (1) BLM lacks jurisdiction to declare appellants' mining claims null and void, and (2) BLM need not accept annual assessment documents from appellants since they are no longer required to comply with provisions of section 314 of FLPMA.

The Board reasoned in Bilderback that "[s]ince the land sought to be claimed by appellants is located upon land which was conveyed to the State of Alaska * * * the land is no longer part of the public lands of the United States." 89 IBLA at 265. For this reason, "the Department does not retain any vestige of jurisdiction over claims of valid existing rights [to the conveyed land], and will not afford a forum in which such claims may be decided." Id. at 267.

While the Department may not provide a forum for the resolution of the conflict between appellants' claim of valid existing rights and the legislative conveyance of the subject lands to the State, the effect of this rule does not impair or extinguish that claim. Recognition of this fact is important in cases such as the one presently before the Board, wherein the BLM decision under challenge appears to be substantively defective. The caption to the BLM decision states in part, "Mining Claim Declared Null and Void." The decision itself contains no discussion of why the claim is null and void. In fact, nothing recited in the decision would indicate that the claim is null and void. The two State selection applications cited in the decision were both filed after the location date of appellants' claim. As before stated, BLM neglects to address the question unresolved in Elizabeth S. Hjellen, supra, i.e., whether the State's February 1963 State selection application covered the land whereon Buckeye #2 is located. This factual determination will be critical in determining the validity of appellants' claim of valid existing rights should they decide to seek judicial recognition of that claim. See Bilderback, 89 IBLA at 269 (Mullen, A. J., concurring).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that part of BLM's March 11, 1985, decision which declared appellants' mining claim null and void is reversed; the rejection of their recordation documents is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge.

